

Suzanne Herman



Dear International Committee Chair Nunes,

I am a US citizen living in Canada. Although I have lived here for many decades, I have always been proud of my US citizenship. It is only due to recent policies undertaken by the US government that I have begun to question the value of that citizenship.

I have been politically active in matters concerning US citizens living in Canada. For this reason, my Member of Parliament, the Honourable John Weston, asked me to make a submission to the Canadian Government's Pre-2013 Budget Survey last summer in the hope that the Canadian Government would understand the importance of allocating Canadian taxpayers funds to examine some of the issues facing dual citizens and how those issues effect Canada as a whole. I am including the entire survey below, as it is a matter of public record, and excerpts from the cover I sent with it. The survey and letter may provide you with some insight into why US citizens are now renouncing their American citizenship in record numbers and how US tax policy plays a role in these renunciations.

\*Footnote: in my letter to the Canadian government, I state that it's been "almost 8 months" since I made a submission to the IRS's Offshore Voluntary Disclosure Initiative, when in fact it has now been **16** months with still no response from the IRS. In the past these initiatives found resolution for taxpayers in less than a year, further supporting the current need for tax reform in the US.

I also state that it is my intention to renounce US citizenship. It should be noted that I have not yet made that bold and irreversible move in the hope that our elected officials in Washington will make the necessary changes our tax laws need in order for Americans to survive while living abroad. I hope that your committee will consider my submission when working to create effective and fair tax reform for ALL Americans.

Yours truly,

Suzanne Herman

MY SUBMISSION TO THE CANADIAN GOVERNMENT:

Dear Finance Committee:

Pre- 2013 Budget Submission Concerning Citizens and Permanent Residences of  
Canada deemed US Persons by the US Government

Please allow me to introduce myself. I am a US citizen, born in the US, who came to Canada with my Canadian mother and two siblings at the age of 12. I have married a Canadian, born in Canada, who through his American father is a US citizen by descent. I became a Canadian citizen in 1996. Neither of us has ever worked in the US, and I have not lived there since moving to Canada in 1968. We first learned about our requirement to file US taxes last August when we read about it in the press. I wish to emphasize that it was not through any direct effort of the US government did we learn of this obligation, although the US had the means to have done so.

My husband and I make every effort to be law-abiding citizens, and even though we have no real connection to the US, we still felt it necessary at the time to obtain the advice of a US tax lawyer. We were advised that the US does not consider ignorance of the law as a defense for never having filed US tax returns. It is with this information and much reservation that we decided to enter the IRS's "Offshore Voluntary Disclosure Initiative" amnesty program for offshore tax evaders. Any misgivings we had were far outweighed by the absolute terror of what maximum penalties outside the OVDI on our unreported 'foreign' bank accounts might do to our retirement savings and our way of life. US persons must disclose to the US government foreign financial assets over a specific threshold, an amount we often exceeded when maintaining bank accounts for our children, parents, businesses, mortgage providers, and retirement. Further complicating our situation was the sale of our principal residence in Canada, which was taxed in the US because it is not taxed in Canada. We believed that this capital gain tax combined with penalties associated with the late tax filing and FBAR's would be financially devastating outside of OVDI. Furthermore, it was revealed to us that our RRSP's are taxable by the IRS, compelling us to make the necessary US government filings to protect them from US taxation.

For us, there was no consolation in knowing that the Canadian government would not collect penalties against Canadians on behalf of the IRS. We felt that should the US decide to start enforcing its tax laws at the US border we may lose our ability to travel freely. Of a greater concern, however, was the enforcement of the Foreign Account Tax Compliance Act, a US law that will require Canadian banks to become collection arms of the IRS.

Since then we have learned through statements by the IRS's own National Tax Advocate, that we, and many people like us were misled into entering OVDI. The IRS guidance during OVDI led tax practitioners and taxpayers alike to believe that the

penalty-abating provisions of the Internal Revenue Manual were no longer available to those with 'offshore' accounts. Through the NTA's report to the US Congress, it has been revealed that the OVDI's purpose is to entrap 'benign actors' into entering an amnesty scheme that often results in unnecessary penalties for those entering the program. After almost eight months we still have not received a response from the IRS. Until we do, we cannot seek the IRS's Tax Advocate's help in determining whether it's in our own interest to now 'opt out' of the OVDI, and in doing so perhaps eliminating all penalties. The uncertainty is stressful, weighs heavy on us, and is preventing us from making important financial decisions.

My husband and I are not tax-evaders or 'bad actors'. We are minnows caught in a net that doesn't discriminate between minnows and whales; a net easily avoided by whales, the 'bad actors', and the willful tax evaders who have the means to remain evasive; the majority of whom reside not beyond its shores, but within the US's own borders. Instead, law-abiding Canadians are ensnared either because of a desire to act in good faith or because of a failing tax treaty that to some is not worth the thousands of pages of paper it's printed on. What is the purpose of a treaty when one party unilaterally changes its' provisions when it best suits their interests, leaving it's own citizens to be treated as second-class citizens in another country? US persons in Canada cannot contribute to savings as other ordinary Canadians can, as tax deferring savings plans in Canada are for the most part taxable by the IRS. We cannot save for retirement or for the education of our children as ordinary Canadians can. Under the current tax treaty, Canadian-US persons will forever pay the higher of the two country's tax rates and receive the lesser of either country's tax deductions.

I resent being treated as a criminal for having a bank account in a country where I am a citizen and being forced to report sensitive information that has nothing to do with income reporting. The Canadian government must uphold the privacy rights of its citizens. It is only a matter of time when Canadians with US citizenship will be shut out of banking services and mortgage funds because we place unnecessary risks on those who provide them. Canadians with US citizenship will be left out of domestic and foreign business partnerships because of IRS reporting requirements that leave those businesses vulnerable to the scrutiny and possibly crippling penalties by the IRS. Today, many US persons living in Canada are making the decision not to start businesses in this country because of the added high cost of US tax compliance. This is a loss to US persons in Canada, the Canadian economy, and all Canadians.

The Government of Canada must not allow our financial institutions to release private information about Canadians under FATCA, whether they do it directly to the IRS at the expense of every account holder, or indirectly through a Canadian taxpayer funded intergovernmental agreement. The cost of FATCA compliance will be borne by ALL Canadians as its implementation and ongoing costs will translate to less profit for the banks, and thus less revenue for the Canadian government. A less robust banking system in Canada is a weaker Canada economically. The crippling

costs of FATCA compliance will be ongoing for Canadian financial institutions as constant vigilance will be required. Canadian banks should not be allowed to implement policies that allow the IRS to attain information on accounts held jointly by family members and spouses who are not US persons, policies that will ultimately ravage families and destroy marriages. Canadian laws must not be changed to accommodate the financial demands of a foreign country. Should the Canadian government change laws to allow banks or CRA to request that information, Canadian citizens may have grounds for a Charter challenge against the Government of Canada. Conversely, if Canada takes decisive action to ensure its laws are upheld to the protection of its citizens, this would be a major precedent for other sovereign nations to follow. I have been blessed to have never felt persecution in my life-that is until the US government required me to pay it tribute on income earned entirely in Canada. I pray that the Government of Canada will not be complicit in this persecution.

For the survey questions for the pre-budget consultations 2012, is wish to attempt to answer each as they relate to a Canadian with US citizenship:

#### **1. Economic Recovery and Growth**

*Given the current climate of federal and global fiscal restraint, what specific federal measures do you feel are needed for a sustained economic recovery and enhanced economic growth in Canada?*

The US government's Foreign Account Tax Compliance Act will burden the Canadian economy and all taxpayers dearly in terms of compliance costs and privacy, whether the banks report directly to the IRS or through the Canadian government. Parliament should forbid the implementation of FATCA, enacting substantial fines against banks for revealing account information to the IRS or any other foreign tax agency. The Government of Canada should provide a complete examination of what an intergovernmental agreement with the US on FATCA will cost the Canadian taxpayer.

US citizenship based taxation, by taking from the wealth and retirement savings of US persons in Canada, directly takes from the Canadian economy, and more greatly exposes Canadians with US citizenship to financial hardship and makes them less able to contribute to the Canadian economy.

#### **2. Job Creation**

*As Canadian companies face pressures resulting from such factors as uncertainty about the U.S. economic recovery, a sovereign debt crisis in Europe, and competition from a number of developed and developing countries, what specific federal actions do you believe should be taken to promote job creation in Canada, including that which occurs as a result of enhanced internal and international trade?*

Canadians considered US persons will see the their ability to compete in domestic and international business negatively effected by US taxation and FATCA. IRS and FATCA reporting requirements increases the cost of doing business and exposes the

companies they are involved in to compliance issues that citizens of other countries or ordinary Canadians don't.

Certainly, as in the case of my husband's business, and any cross border business, the FATCA withholding of funds by either Canadian banks or the US government will effect job creation in Canada.

### **3. Demographic Change**

*What specific federal measures do you think should be implemented to help the country address the consequences of, and challenges associated with, the aging of the Canadian population and of skills shortages?*

For various reasons, parts of Canada are experiencing a shortage of qualified people to fill jobs. Americans would be a good fit for Canada, but problems will naturally arise due to the US's policy of extraterritorial taxation, making these workers less desirable than those from other countries. The Canadian government must make every effort possible to persuade the US to abandon its policy of citizenship-based taxation in order to make American workers less impeded when competing for jobs and business opportunities abroad.

The taxation of US persons in Canada threatens the economic security and independence of those citizens by taking from their savings through taxes, penalties and the high cost of compliance. With Canada's aging population, it is of increasing importance that individuals are able to sufficiently save in order to supplement the government plans that are available. When the US government penalizes through taxation, the ability of US persons to contribute to even some of Canada's mandatory and voluntary retirements savings opportunities, US persons are left vulnerable and less able to contribute to the Canadian economy in old age and will potentially place more of a burden on Canadian government subsidies. The Canadian government must examine what the cost will be to Canada's economy when US persons, unable to contribute to RRSP's, PRPP's, TSFA's, and RDSP's, are less able to contribute to the Canadian economy or cover the costs of their own care in old age.

### **4. Productivity**

*With labour market challenges arising in part as a result of the aging of Canada's population and an ongoing focus on the actions needed for competitiveness, what specific federal initiatives are needed in order to increase productivity in Canada?*

Along with creating two distinct classes of Canadians, the US's extraterritorial taxation laws and FATCA will also create two distinct classes of US persons in Canada. The productivity of all US persons in Canada will depend in which class he or she falls. The Canadian government should examine how those with US citizenship who can remain undetected as US persons in Canada will be given an

unfair advantage over US persons who are not so fortunate, those with US birthplaces on their identification, those already known to be US citizens, or those who if asked whether they are US persons choose to answer honestly.

## **5. Other Challenges**

*With some Canadian individuals, businesses and communities facing particular challenges at this time, in your view, who is facing the most challenges, what are the challenges that are being faced and what specific federal actions are needed to address these challenges?*

In my opinion, Canadians who are deemed “US persons” face the greatest challenge of any group of Canadians. There are by estimates 1M Americans living in Canada, or almost 3% of Canada’s population. A significant portion of the population, such as we are, cannot help have an influence on Canada’s economy. The recent actions of the US government against its citizen’s living in Canada have been life altering for many. Many US persons and their families feel under siege and worry tremendously about their future, resulting in a large number of Canadians adversely affected by the actions of the US.

Canada should use its seat at the UN General Assembly to denounce United States extra-territorial taxation as a violation of the Universal Declaration of Human Rights and as a violation of the sovereign rights of other nations to have exclusive rights to tax within their own borders. With this, the Government of Canada should explore the allocation of funds it would need to make a legal challenge to the USA’s extraterritorial overreach into Canada and the taxation of its non-residents in Canada. It would be valuable to examine whether the US policy of taxing its citizens abroad may in the long run cost the Canadian government more than if the Government of Canada was to invest in negotiating an end to citizenship based taxation now, and if in fact it could be achieved through treaty negotiation or through the courts. The Canadian government must use whatever means at its disposal, diplomatic or through the courts, to persuade the US government that its policy of taxing its citizens abroad is harmful to those citizens, and will cost the US government more in the long run by continuing to do so.

Barring that achievement, the Government of Canada should also make significant effort to renegotiate the Canada-US tax convention to better achieve reciprocity between the two nations. Through its “Last in Time Rule”, US has already explicitly violated the treaty both in letter and spirit. This is not acceptable in any future agreement. Canada should insist that the US inform Canada of how much tax revenue is being collected from Canadian sources from Canadian residents. In a new treaty, Canada should insist that income that is purely Canadian be taxed solely in Canada, regardless of the amount. Parliament should create a commission by which to study the negative effects of US taxation on Canadian residents and create various means of reciprocity for the US to comply with by paying compensation for those effects.

Both the US and Canadian governments must make efforts to educate US persons in Canada of their US tax obligations. The IRS has the responsibility, duty and obligation to reach out to US persons living abroad to make filing requirements discoverable and known to those who are required to make them. The IRS seems to have deliberately ignored their citizens living abroad in its education and outreach efforts, when in fact these groups should have been the primary audience. Accepting this, should the Canadian government be unable to make a compelling argument for the US to invest in responsible and adequate means to educate its citizens, the Canadian government itself must step up to do so in order to protect its citizens from the potentially life altering consequences through the actions of the IRS. The Canadian government should be informing US persons in Canada of which measures our government is taking to protect their rights as Canadians or permanent residents.

Finally, the Government of Canada must give consideration to the long-term effect its permanent residents and citizens with US tax and reporting requirements will have on the economic stability and tax base of Canada. Eventually, Canadian immigration authorities may need to recognize that US persons seeking residence here have inherently divided loyalties forced upon them by US tax policies, therefore becoming potential liabilities to Canada. As a result, it may become necessary for the Canadian government to restrict US persons from seeking permanent residency and citizenship in Canada.